

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**JOINTLY PROPOSED AGENDA
FOR THE SEPTEMBER 18, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee, Official Creditors' Committee, and Trustee jointly propose the following agenda for the September 18, 2014 status conference. All defendants whose counsel filed notices of appearance in the MDL have been given an opportunity to comment on this proposed agenda.

A. Report to the Court.

1. Status of mediation efforts [Mediation Order, Dkt. No. 394]
 - a. High Point Notice of Mediation Participation [Dkt. 1393]
2. Status of insurance declaratory actions:
 - a. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS; *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS
 - i. Status conference scheduled for November 24, 2:00 PM
 - b. *Great American E&S Insurance Company v. Liberty Industries, Inc.*, 3:14-cv-00499-VLB (D. Conn.)
 - i. Action ongoing. Answer filed 7/15/14 [Dkt. No. 16].
3. Status of discovery
 - a. Discovery from Affiliated Defendants
 - i. PSC's motion to lift stay against the Affiliated Defendants [Dkt. 534] (already argued)
 - ii. Liberty's motion to lift discovery stay against Affiliated Defendants [Dkt. 1229]

- iii. Trustee's Motion for Entry of an Order Limiting Discovery and Staying Proceedings with Respect to NECC Insiders and Related Settling Parties (see # 12.c. for list of all related filings)
- b. Ongoing discussions regarding common discovery with all non-affiliated defendants (per Judge Boal's request)
 - i. Comparison of Proposed Discovery and Bellwether Trial Plan [Dkt. 1292]
 - 1. Liberty Position Statement [Dkt. 1317]
 - 2. UniFirst Response [Dkt. 1319]
 - 3. Insight Objection to UniFirst Response on Bellwether [Dkt. 1400]
- 4. Trustee's Notice Regarding Further Relief from Preservation Order [Dkts. 1174, 1308] and compliance with the Court's August 12, 2014 Order
- 5. Status of litigation track
 - a. Scheduling argument on motions that will be ripe by the October 23, 2014 status conference (see # 13 below)
- 6. Status of bankruptcy
- 7. Status of appeals
- 8. Schedule for future status conferences
 - a. October 23, 2014, at 2:00 PM EDT
 - b. December 4, 2014, at 2:30 PM EDT

B. Fully-briefed motions.

- 9. Dallas Back Pain Management/Momentum Pain Management and Abbeselom Ghermay's Motion to Dismiss [Dkt. 1133, 1208, and 1209]
 - a. Henley Opposition [Dkt. 1124, 1241]
 - b. Dallas Back Pain request for judgment on the papers [Dkt. 1346]
- 10. Motions to dismiss in *Pennington, Ramos, and Rivera*
 - a. *Motions to Dismiss*
 - i. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit (*Ramos*) [Dkt. 1039] (oral argument requested by Dr. Bhagat)
 - ii. Dr. Perkins's Motion to Dismiss (*Pennington*) [*Pennington* Dkt. 59]

- iii. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit (*Rivera*) [MDL Dkt. 1194]
- b. Plaintiffs' motions to amend in same cases
 - i. *Rivera* [13-cv-10412, Dkt. 51-6]
 - ii. *Ramos* [13-cv-10410, Dkt. 51-6]
 - iii. *Pennington* [13-cv-10406, Dkt. 64-6]
- 11. PSC's Motion to Amend Previously filed Short Form Complaints [Dkt. 1291] (no argument requested)
 - a. Tennessee Clinic Defendants' response [Dkt. 1304]
 - b. St. Thomas Entities Request for Extension of Time to Respond until September 4 [Dkt. 1312]
 - c. UniFirst Request for Extension of Time to Respond until September 4 [Dkt. 1314]
 - d. Liberty Response [Dkt. 1316]
 - e. PSC's Notice of Filing of Agreed-To Order on Amending Previously Filed Short Form Complaints [Dkt. 1397]
- 12. Discovery-related motions (*most referred to Judge Boal*)
 - a. Comparison of Proposed Discovery and Bellwether Trial Plan [Dkt. 1292]
 - i. Liberty Position Statement [Dkt. 1317]
 - ii. UniFirst Response [Dkt. 1319]
 - iii. Insight Objection to UniFirst Response on Bellwether [Dkt. 1400]
 - b. PSC's Motion to Partially Lift Discovery Stay against Affiliated Defendants [Dkt. 534] (already argued)
 - i. Various oppositions filed
 - ii. Tennessee Clinic Defendants' Joinder [Dkt. 1041]
 - c. Trustee's Motion for Entry of an Order Limiting Discovery and Staying Proceedings with Respect to NECC Insiders and Related Settling Parties [Dkts. 1342-1343]
 - i. Liberty Opposition [Dkt. 1349]
 - ii. OCC Joinder in Trustee's Motion for Stay [Dkt. 1350]
 - iii. St. Thomas Entities Opposition to Trustee Motion for Stay [Dkt. 1351]
 - iv. Tennessee Clinic Defendants' Opposition to Trustee Motion for Discovery Stay [Dkt. 1356]

- v. Trustee Motion for Leave to File Reply on Motion for Stay [Dkt. 1404]
- vi. OCC Motion for Leave to File Joinder in Trustee's Consolidated Reply [Dkt. 1416]
- d. Liberty's Motion for Order to Lift Stay With Respect to Affiliated Defendants [Dkt. 1229] (*Referred to Judge Boal*)
 - i. PSC's Joinder [Dkt. 1260]
 - ii. Ameridose's Opposition [Dkt. 1262]
 - iii. Chapter 11 Trustee's Opposition [Dkt. 1263]
 - iv. Pharmacists Mutual Insurance Company's Opposition [Dkt. 1264]
 - v. Opposition to Liberty Industries' Motion to Lift Discovery Stay by Medical Sales Management, Insider Individuals, and GDC Properties [Dkt. 1265]
- e. Saint Thomas Entities' Motion to Modify Case Management Order No. 6 [Dkt. 1075, 1076] (*Referred to Judge Boal*)
- f. Motion to Stay Discovery by Saint Thomas Health, Saint Thomas Network, Saint Thomas West Hospital [Dkt. 595, 596] (*Referred to Judge Boal*)
 - i. Hearing held July 17 [Dkt. 1127]
- g. Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (St. Thomas Trial Plan) filed by PSC [Dkt. 837, 838] (*Referred to Judge Boal*)
 - i. Hearing held July 17 [Dkt. 1127]
- h. Motion for Entry of Deposition Protocol Order [Dkt. 996, 998, 1009, 1054] (*Referred to Judge Boal*)
 - i. Argued at April 10, 2014 hearing [Dkt. 1081]

13. PSC's Motion for Entry of Case Management Order Regarding Virginia Matters [Dkt. 1188]

- a. Insight's Opposition to Motion for Order [Dkt. 1256]
- b. PSC Reply [Dkt. 1289]
- c. PSC Supplemental Memorandum [Dkt. 1311]
- d. PSC Exhibit [Dkt. 1318]

14. Motions for extension of time / briefing schedules

- i. Third Jointly Proposed Unifirst and PSC Motion for Order to Set Briefing Schedule [Dkt. 1259]

- ii. Insight Motion for Extension of Time to Answer Complaints for 30 days following Termination of Mediation [Dkts. 1330-1331]
- iii. PSC and APAC's Joint Motion to Extend Briefing for Motion to Dismiss [Dkts. 1395-1396]
- iv. St. Thomas Entities Motion to Extend Time to Answer Complaints [Dkt. 1403]
- v. Premier's Motion to Extend Time to Answer Complaints [Dkt. 1405]
- vi. Roanoke Gentry Locke Plaintiffs' Motion for Extension of Time to Respond to Image Guided Pain Management's Motion for Partial Judgment on the Pleadings for 30 days following Termination of Mediation [Dkt. 1414]
- vii. Frith Ellerman Plaintiffs' Motion for Extension of Time to Respond to Image Guided Pain Management's Motion for Partial Judgment on the Pleadings for 30 days following Termination of Mediation [Dkt. 1418]
- viii. PSC-Premier Stipulation on 60 Day Extension of Time for Premier to Answer Complaints and Tolling [Dkt. 1419]
- ix. PSC-BKC Joint Motion to Reschedule Oral Argument on Motion to Dismiss for October 23, 2014 Status Conference [Dkt. 1420]
- x. Roanoke LichtensteinFishwick Plaintiffs' Motion for Extension of Time to Respond to Image Guided Pain Management's Motion for Partial Judgment on the Pleadings for 30 days following Termination of Mediation [Dkt. 1422]

15. Motion for Summary Judgment by Hahnemann University Hospital, Pain Care Professionals-Pain Center at Hahnemann, Tenent Healthsystem Hahnemann, LLC (1:14-cv-10434-RWZ) [*King* Dkt. 16]

- a. Plaintiff's Response in Opposition to Motion For Summary Judgment [*King* Dkt. 21]
- b. Letter/request (non-motion) from Plaintiff Norma King for extension of time to secure new counsel [*King* Dkt. 26]

16. Dispositive motions ready for argument by the October 23, 2014 status conference

- a. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
- b. BKC Motion to Dismiss [Dkt. 896, 897]

i. PSC Opposition [Dkt. 1062]

c. APAC Motion to Dismiss for Failure to State a Claim [Dkt. 1108, 1109]

C. Briefing in progress.

17. Ameridose's Motion for Order to Proceed with Destruction of Recalled Inventory [Dkt. 1090]

a. UniFirst's Response [Dkt. No. 1272]

b. Tennessee Clinic Defendants' assented to motion for extension of time to respond until September 25, 2014 [Dkt. 1348]

18. Insight's Motion to Strike Eighteen State Court Orders as Void ab initio [Dkt. 1284, 1285]

a. Roanoke Gentry Locke Plaintiffs' opposition [Dkt. 1326]

19. Dispositive Motions:

a. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]

i. Opposition put off pending mediation

b. Image Guided Pain Managements Motion for Judgment on the Pleadings [Dkts. 1361-1391]

c. Encino Outpatient Surgery Center, Inc. Motion to Dismiss for Lack of Jurisdiction and Insufficient Service of Process (1:14-cv-12884) [*Luna-Wynstock* Dkt. 22]

d. Liberty Industries, Inc.'s Motion for Summary Judgment [*Lambert* Dkt. No. 29, 30]

20. Insight Health Corp.'s Motion for Reconsideration and Leave to Amend Responses to Request for Admission and to Supplement Motion for Reconsideration of Partial Summary Judgment [Dkt. 1281 and 1282]

a. Roanoke Gentry Locke Plaintiffs' Opposition to Motion for Reconsideration [Dkt. 1327]

21. Rodriguez Motion to Withdraw as Counsel for Maria Lumeras [Dkt. 1352]

22. Liberty Offer of Judgment [Dkt. 1394]

a. Trustee-OCC Motion to Strike Liberty's Offer of Judgment [Dkt. 1402]

23. Liberty's Motion to Seal Documents Filed in Support of Summary Judgment [Dkt. 1401]

Dated: September 17, 2014

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*Chapter 11 Trustee for the Estate of New
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Jointly Proposed Agenda for the September 18, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 17, 2014

/s/ Kristen A. Johnson
Kristen A. Johnson, BBO # 667261